



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.A. (MD) No.32 of 2016
and
C.M.P. (MD) Nos.257, 258 & 2205 of 2016

I.Kezhson ... Appellant / Petitioner
-vs-

1.The Superintending Engineer (H), C & M
(High Ways), Tirunelveli Circle
Tirunelveli-2

2.The Divisional engineer (Highways)
Quality Control
Tirunelveli-2

3.Manikandan

4.R.Balakrishnan ... Respondents / Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 15.12.2015, made in W.P.(MD) No.18883 of 2014, on the file of this Court.

Prayer in WP(MD). 18883/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records pertaining to Tender notice no.13/2014-2015/D1 dated 07.10.2014 and Tender Notice No.14/2014-2015/D1 dated 08.10.2014 on the file of the 1st respondent and quash the same consequently direct the 1st respondent to conduct a fresh tender by calling for fresh notification.

For Appellant : Mr.Puhazh Gandhi

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader for R1
Mr.K.K.Ramakrishnan for R3
No appearance for R2 & R4

J U D G M E N T

[Judgment of the Court was made by M.SATHYANARAYANAN, J.]

With the consent of both sides, this writ appeal is taken up for final hearing.

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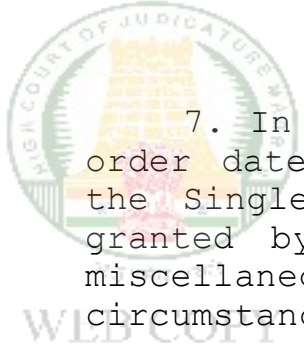
2. The facts, which led to the filing of the writ petition, have extensively been narrated in the impugned order, dated 15.12.2015, passed in W.P.(MD) No.18883 of 2014, by the Single Bench of this Court and hence it is not necessary to re-state the same once again.

3. The appellant / writ petitioner pending disposal of the writ petition in W.P.(MD) No.18883 of 2014, filed a miscellaneous petition in M.P.(MD) No.2 of 2014 praying for stay of all further proceedings pursuant to the tender notices, dated 07.10.2014 and 08.10.2014 respectively, issued by the first respondent and this Court, recording the submission of the learned counsel appearing for the petitioner that the first respondent is issuing the work order to the concerned persons, passed an interim order to the effect that issuance of any work order to the concerned persons is subject to the outcome of the writ petition.

4. The learned counsel appearing for the appellant would submit that the genuine claim of the appellant to participate in the tender process has been unjustifiably rejected by the official respondents and though the successful bidders have completed their work pursuant to the work orders, cause of action for prosecution of the appeal still survives.

5. Per contra, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the first respondent and Mr.K.K.Ramakrishnan, learned counsel appearing for the successful bidder, submitted that the work has already been completed by issuing work orders and invited the attention of this Court to the impugned order passed by the Single Bench of this Court, wherein it has been observed that as 80% of the work has been completed by issuing work orders, the only remedy available to the petitioner is to claim damages by establishing his case that the entire tender process has been designed by the official respondents in order to prevent him from submitting his tender to the package of his choice, by filing appropriate legal proceedings, wherein he can establish his case by proper evidence.

6. This Court, on an independent application of mind, is of the considered view that the points urged by the learned counsel for the appellant involve adjudication of factual dispute and therefore availing the common law remedy is just and equitable one and the writ appeal deserves dismissal.



7. In the result, the writ appeal is dismissed confirming the order dated 15.12.2015, passed in W.P.(MD) No.18883 of 2014, by the Single Bench of this Court and the interim orders already granted by this Court stand vacated. Consequently, connected miscellaneous petitions are closed. In the facts and circumstances, there is no order as to costs.

Sd/
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar.

To

1.The Superintending Engineer (H), C & M,
(High Ways), Tirunelveli Circle,
Tirunelveli-2.

2.The Divisional engineer (Highways),
Quality Control, Tirunelveli-2.

+1CC to M/S.K.K.Ramakrishnan, Advocate, SR.No. 54341
+1CC to the Special Government Pleader, SR.No. 54720

W.A. (MD) No.32 of 2016
and
C.M.P. (MD) Nos.257 & 258 of 2016

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